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January 24, 2003

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: CC Dockets No. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, and  
NSD File No. L-00-72

Dear Ms. Dortch:

AT&T Corp. ("AT&T") and WorldCom, Inc. ("WorldCom") file this *ex parte* in opposition to an *ex parte* submission filed by the Cellular Telecommunications & Internet Association ("CTIA") *et al.* on January 16, 2003 concerning the Universal Service Fund ("USF"). CTIA urged the Commission to "clarify" certain matters in the December 13, 2002 *Interim USF Order* (FCC 02-329), including that wireless carriers "may use a company-specific factor of interstate traffic to show interstate revenues for [USF] contributions purposes" and "to determine interstate revenues on individual customer bills for the purpose of computing individual recovery surcharges."

AT&T and WorldCom strongly urge the Commission *not* to act on these requests based on *ex parte* submissions. The *Interim USF Order* clearly resolved these issues and held that a wireless carrier may rely on the 28.5% Commission-prescribed safe harbor for FCC USF contribution purposes and may apply that as the presumed interstate usage for purposes of USF recovery on individual customers bills. *Interim USF Order*, ¶¶ 21-25, 51 & n.131. The Commission also stated *explicitly* that it "will no longer permit carriers – whether wireline or wireless – to average contribution costs across all end-user customers when establishing federal universal line-item amounts." *Id.* at ¶ 51. These are key holdings and any reconsideration (or clarification) should be based on fully-briefed petitions for reconsideration and replies, as contemplated under the Commission's rules.<sup>1</sup> 47 C.F.R. § 1.429.

<sup>1</sup> In a related matter, USTA filed an *ex-parte* presentation with the FCC (*see* January 16, 2003 letter from Robin E. Tuttle), seeking similar relief from the prohibitions against averaging contribution costs at the "customer class level" in the LECs' line-items. Not only does USTA need to be more specific in defining what it means by "customer class," but USTA's requests should *not* be granted based on an *ex-parte* submission, but must be fully vetted in the context of a Petition for Reconsideration.

In its letter, CTIA requests the Commission to clarify that the averaging language cited above is meaningless. Essentially, CTIA states that the *Interim USF Order* should be read to permit wireless carriers to calculate a company-specific interstate usage factor and then use that factor as a line-item amount to average its universal service expense across all end users in violation of the express prohibition identified above. Clearly, if a CTIA member can identify for all of its calls on a company-specific basis the percentage of those which are “interstate” (by calculating originating cell site and terminating area code), it has the capability of making the same identification on a customer-by-customer basis. Consequently, that company has the information necessary to bill individual customers on that particular customer’s percentage of interstate usage. CTIA’s proposed “clarification” would permit a wireless carrier to assert an interstate usage percentage below the established interstate safe harbor (which was established specifically for carriers who could *not* calculate an interstate percentage) but allow that carrier to continue to utilize the safe harbor averaging advantage. That is not permitted by the plain-language of the *Order*. Not only would the CTIA-proposed company-specific interstate usage factor allow wireless carriers to contribute less to the USF, and recover lower USF amounts from their customers than their actual interstate usage would warrant, but the shortfall will have to be made up by higher USF contribution factors and, accordingly, higher USF surcharges on customer bills.<sup>2</sup>

Any inability that a carrier has in the circumstances described above to bill specific end users an assessment based on the particular customer’s interstate usage is not due to a lack of data about that customer’s interstate usage percentage. If the carrier unilaterally chooses not to utilize available data to comply with the *Interim USF Order*, then that carrier must utilize the safe harbor percentage of 28.5%. In that respect, the carrier’s situation is not dissimilar to the “unbillable revenues” situation described by AT&T in the underlying proceeding (except that the inability to assess a line-item was not AT&T’s, but rather the underlying incumbent local exchange provider that performed the end-user billing function on behalf of AT&T). Prior to the *Interim USF Order*, AT&T addressed that issue by averaging the universal service expense created by “unbillable revenues” to AT&T’s billable revenue base. As of April 1, 2003, and specifically pursuant to the language cited above, AT&T has been prohibited from continuing that practice as have all other carriers, including wireless carriers. By its request, CTIA seeks to perpetuate the competitive advantage that wireless carriers have had under the existing safe harbor rules even where the interstate calling data, which would obviate the need for a safe harbor, are readily available.<sup>3</sup>

The Commission has before it a detailed record on the competitive issues associated with the wireless safe harbor. In addition to increasing the safe harbor to 28.5%, it gave wireless

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<sup>2</sup> No carrier will utilize the company-specific interstate percentage rule unless it doing so will result in an interstate percentage below the safe harbor rate. The whole purpose of utilizing that rule would be to lower that carrier’s universal service contribution. In addition, the Commission specified that the safe harbor must be applied to *all* of the affiliates of the wireless provider, in contrast to the company-specific safe harbor that CTIA now proposes.

<sup>3</sup> The Commission purposefully set the safe harbor at the high end of the range of estimates provided by wireless carriers to provide incentives for them to report actual interstate telecommunications revenues. *Interim USF Order*, ¶ 22.

carriers a simple choice; if they have actual usage data that demonstrates a lower interstate usage, they must use that data for *every* customer of every affiliate. Otherwise, they must apply the Commission-authorized safe harbor of 28.5% for *all* of their customers.

In accordance with FCC rules, a copy of this letter is being filed in each of the above-captioned dockets.

Respectfully yours,

          /s/            
Robert W. Quinn  
AT&T Corp.

          /s/            
Richard S. Whitt  
WorldCom, Inc.